

Amend 2 Cal. Code Regs. Section 18700 to read:

§ 18700. Basic Rule; Application: Definitions; Guide to Conflict of Interest Regulations.

(a) Basic Rule: No public official at any level of state or local government may make, participate in making, or in any way use or attempt to use ~~his/her~~ his or her official position to influence a governmental decision in which ~~he/she~~ he or she knows or has reason to know ~~he/she~~ he or she has a ~~disqualifying conflict of interest~~ financial interest. A public official has a ~~conflict of financial interest in the decision~~ if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, one or more of his/her economic interests, unless the public official can establish either: (1) that the effect is indistinguishable from the effect on the public generally, or (2) a public official's participation is legally required: directly on the official or his or her immediate family, or on any interest described in subdivision (c)(7)(A-F) herein. (Sections 87100, 87101, & 87103.)

~~(b) To determine whether a given individual has a disqualifying conflict of interest under the Political Reform Act, proceed with the following analysis:~~

~~(1) Determine whether the individual is a public official, within the meaning of the Act. (See Government Code section 82048; 2 Cal. Code Regs. § 18701.) If the individual is not a public official, he or she does not have a conflict of interest within the meaning of the Political Reform Act.~~

~~(2) Determine whether the public official will be making, participating in making, or using or attempting to use his/her official position to influence a government decision. (See 2 Cal. Code Regs. § 18702.) If the public official is not making, participating in making, or using or attempting to use his/her official position to influence a government decision, then he or she does not have a conflict of interest within the meaning of the Political Reform Act.~~

~~(3) Identify the public official's economic interests. (See 2 Cal. Code Regs. § 18703.)~~

1 (4) For each of the public official's economic interests, determine whether that interest is
2 directly or indirectly involved in the governmental decision which the public official will be making,
3 participating in making, or using or attempting to use his/her official position to influence. (See 2
4 Cal. Code Regs. § 18704.)

5 (5) Determine the applicable materiality standard for each economic interest, based upon the
6 degree of involvement determined pursuant to California Code of Regulations, title 2, section 18704.
7 (See 2 Cal. Code Regs. § 18705.)

8 (6) Determine whether it is reasonably foreseeable that the governmental decision will have a
9 material financial effect (as defined in California Code of Regulations, title 2, section 18705) on each
10 economic interest identified pursuant to California Code of Regulations, title 2, section 18703. (See 2
11 Cal. Code Regs. § 18706.) If it is not reasonably foreseeable that there will be a material financial
12 effect on any of the public official's economic interests, he or she does not have a conflict of interest
13 within the meaning of the Political Reform Act. If it is reasonably foreseeable that there will be a
14 material financial effect on any of the public official's economic interests, and the official does not
15 participate in the decision, determine whether the official may segment the decision into separate
16 decisions to allow his or her participation in subsequent decisions. (See 2 Cal. Code Regs. § 18709.)

17 (7) Determine if the reasonably foreseeable financial effect is distinguishable from the effect
18 on the public generally. If the official can establish that the reasonably foreseeable material financial
19 effect on his or her economic interest is indistinguishable from the effect on the public generally, he
20 or she does not have a conflict of interest within the meaning of the Political Reform Act. If the
21 reasonably foreseeable material financial effect on the public official's economic interest is
22 distinguishable from the effect on the public generally, he or she has a conflict of interest within the
23 meaning of the Political Reform Act. (See 2 Cal. Code Regs. § 18707.)

24 (8) Determine if the public official's participation is legally required despite the conflict of
25 interest. If the official can establish that his or her participation is legally required, he or she may

1 ~~participate in the governmental decision despite the conflict of interest. (See 2 Cal. Code Regs. §~~
2 ~~18708.)~~

3 (b) Application: The Act's conflict of interest prohibitions apply only to public officials and
4 only to governmental decisions that have a financial effect on a person other than effects on the
5 governmental agency employing the public official resulting from the performance of his or her
6 official duties.

7 (c) For purposes of the Act's conflict of interest provisions, (Sections 87101-87105;
8 Regulations 18700-18706), the following definitions apply:

9 (1) "Public Official" (see Section 82048) means every member, officer, employee, or
10 consultant of a state or local government agency other than:

11 (A) A judge or court commissioner;

12 (B) A member of the Board of Governors *and designated employees* of the State Bar of
13 California;

14 (C) A member of the Judicial Council;

15 (D) A member of the Commission on Judicial Performance, provided that he or she is subject
16 to the provisions of Article 2.5 (commencing with Section 6035) of Chapter 4 of Division 3 of the
17 Business and Professions Code as provided in Section 6038 of that article.

18 (E) A federal officer or employee serving in an official federal capacity on a state or local
19 government agency.

20 (2) "Officers" or "employees" includes but is not limited to individuals who serve in a
21 position listed in Section 87200 or serves in a staff capacity that makes or participates in making
22 governmental decisions. An individual "serves in a staff capacity" when he or she performs the
23 same, or substantially the same, duties as other employees listed in the agency's statement of
24 organization

1 (3) “Member” does not include an individual who performs duties as part of a committee,
2 board, commission, group, or other body that does not have decisionmaking authority.

3 (A) A committee, board, commission, group, or other body possesses decisionmaking
4 authority whenever:

5 (i) It may make a final governmental decision;

6 (ii) It may compel or prevent a governmental decision either by reason of an exclusive power
7 to initiate the decision or by reason of a veto that may not be overridden; or

8 (iii) It makes substantive recommendations and, over an extended period of time, those
9 recommendations have been regularly approved without significant amendment or modification by
10 another public official or governmental agency.

11 (B) A committee, board, commission, group, or other body does not possess decisionmaking
12 authority if it is formed or engaged for the sole purpose of researching a topic and preparing a report
13 or recommendation for submission to another public official or governmental agency that has final
14 decisionmaking authority, and does not meet any of the criteria set forth in subsection (3)(A)(i-iii),
15 above.

16 (4) “Consultant” means an individual, other than an agency member, officer, or employee,
17 who, at the request or direction of a governmental agency, provides expert or professional advice,
18 assistance, opinion, information, or counsel concerning any potential official action being considered
19 by the governmental agency. This includes any employee of any organization that provides such
20 services where the employee takes part in the services rendered. For purposes of the Act’s conflict of
21 interest rules, “consultant” does not include an individual engaged for the sole purpose of researching
22 a topic and preparing a report or recommendation for submission to another public official or
23 governmental agency that has final decisionmaking authority regarding the matter. For purposes of
24 this determination, the governmental agency or public official does not have final decisionmaking
25 authority regarding the matter in either of the following circumstances:

1 (A) The advice, assistance, opinion, information, counsel, or other recommendation provided
2 by the consultant is beyond the common or ordinary knowledge in the subject, field, or area of
3 expertise engaged in by the official or agency being advised, and it is of such a specialized nature
4 that the person being advised is unable to make an independent, reasoned decision or understand the
5 rationale for the recommendation without reliance upon the advice, assistance, opinion, information,
6 counsel, or other recommendation provided by the consultant.

7 (B) The consultant either chooses or recommends an option with regard to a purchasing
8 decision and the selection is an integral part of a contract for which the agency expends funds.

9 (5) “Governmental agency” means any state or local agency or any entity or organization
10 acting as a governmental agency as determined under Regulation 18700.1.

11 (6) “Governmental decision” means any action taken by a government agency that has a
12 financial effect on any person other than the governmental agency making the decision.

13 (7) “Financial effect” means an effect that provides a benefit of monetary value or prevents
14 or avoids a detriment of monetary value to the official or any of his or her financial interests unless
15 the official affirmatively acts in a manner contrary to that effect.

16 (8) “Financial Interest” means any financial effect on the official, a member of his or her
17 immediate family, or on any of the following:

18 (A) Any business entity, as defined in Section 82005, in which the public official has a direct
19 or indirect investment worth at least \$2,000 (Section 87103(a).); For a “parent, subsidiary, or
20 otherwise related business entity,” see Regulation 18700.2.

21 (B) Any real property, as determined under Regulation 18700.3, in which the public official
22 has a direct or indirect interest of at least \$2,000 (Section 87103(b).);

23 (C) Any source of income, as defined in Section 82030, amounting to a total of at least \$500,
24 provided or promised to, and received by the public official within 12 months before the decision is
25 made (Section 87103(c).); Income is “promised to” the public official if he or she has a legally

1 enforceable right to the promised income [moved from Regulation 18703.3.]. For a source of income
2 that is a business entity that is a “parent, subsidiary, or otherwise related business entity”, see
3 Regulation 18700.3.

4 (D) Any business entity, as defined in Section 82005, in which the public official is a
5 director, officer, partner, trustee, employee, or holds any position of management (Section
6 87103(d).); For a “parent, subsidiary, or otherwise related business entity,” see Regulation 18700.2.

7 (E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts amounting to a
8 total of at least \$440 provided to, received by, or promised to the public official within 12 months
9 before the decision is made (Section 87103(e); Regulation 18941(b).);

10 (F) For purposes of this paragraph (c)(8), indirect investment or interest means any
11 investment or interest owned by the spouse or dependent child of a public official, by an agent on
12 behalf of a public official, or by a business entity or trust in which the official, the official’s agents,
13 spouse, and dependent children own directly, indirectly, or beneficially at least a 10-percent
14 interest (Section 87103(e).).

15 (d) To determine whether a public official has a disqualifying conflict of interest under the
16 Act, proceed with the following analysis:

17 (1) Step One: Will the governmental decision have a reasonably foreseeable financial effect
18 on any of the public official’s financial interests? To determine if the financial effect is reasonably
19 foreseeable, apply Regulation 18701[*currently Regulation 18706*]. If the answer is no, there is no
20 conflict of interest under the Act. If the answer is yes, proceed to Step Two.

21 (2) Step Two: Will the reasonably foreseeable financial effect be material? To determine if
22 the reasonably foreseeable financial effect is material, apply Regulation 18702 [*currently Regulation*
23 18705]. If the answer is no, there is no conflict under the Act. If the answer is yes, proceed to Step
24 Three.

1 (3) Step Three: Can the public official demonstrate that the material financial effect on the
2 public official's financial interest is indistinguishable from its effect on the public generally? To
3 determine if the material financial effect on any of the public official's financial interest is
4 indistinguishable from its effect on the public generally, apply Regulation 18703 [currently
5 Regulation 18707]. If the answer is yes, there is no conflict under the Act. If the answer is no,
6 proceed to Step Four.

7 (4) Step Four: If after applying the three step analysis and determining you have a conflict of
8 interest, absent an exception, you may not make, participate in making, or in any way attempt to use
9 your official position to influence the governmental decision. To determine if you are "making,
10 participating in making, or in any way attempting to use your official position to influence a
11 governmental decision," apply Regulation 18704 [currently Regulation 18702]. If the public official
12 will be called upon to make, participate in the making, or use his or her official position to influence
13 a governmental decision in which he or she has a financial interest as determined under Step One
14 through Step Three, he or she will have a prohibited conflict of interest.

15 (e) Exception: Notwithstanding the provisions of Sections 87100 and 87103 and this
16 regulation, a public official may make or participate in a governmental decision in which he or she
17 has a conflict of interest if the provisions of Section 87101 and Regulation 18705 [currently
18 Regulation 18708] apply.

19 (f) Segmentation: To determine if an agency may segment a decision in order to allow a
20 public official to participate in a governmental decision by removing from consideration the elements
21 of the governmental decision in which the official would otherwise have a prohibited conflict of
22 interest, apply Regulation 18706 [currently Regulation 18709].

23 Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100 and 87103,
24 Government Code.